

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against -

**MEMORANDUM AND ORDER**

ROBERTO ARCE,

16 Cr. 643-2 (NRB)

Defendant.

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**NAOMI REICE BUCHWALD**  
**UNITED STATES DISTRICT JUDGE**

Roberto Arce, through his counsel, has filed a renewed motion for compassionate release from FCI Jesup. Mr. Arce bases his renewed motion on two changed circumstances. First, while FCI Jesup had no reported cases of COVID-19 when he filed his initial motion, 177 of its inmates now have the disease. See COVID-19 Cases, BOP, <https://www.bop.gov/coronavirus/index.jsp> (last visited July 21, 2020). Second, Mr. Arce is one of those 177 inmates, and FCI Jesup has accordingly placed him in medical isolation. ECF No. 224 ¶ 7.


The purpose of granting compassionate release based on the threat of COVID-19 is, in the vast majority of cases, to reduce the probability that a defendant who is particularly susceptible to severe illness from the disease contracts it by releasing him from a setting that engenders its spread. That purpose is inapposite, however, where, as here, a defendant has already contracted the disease. One court has stated, and another has

implied, that in such a scenario, the Court should consider whether there are extraordinary and compelling circumstances warranting a reduction in sentence based on the defendant's "present need for medical treatment and the adequacy of the treatment that he is receiving." United States v. Zubkov, 14 Cr. 773 (RA), --- F.Supp. 3d ---, 2020 WL 2520696, at \*3 (S.D.N.Y. May 18, 2020); see United States v. Russo, No. 16 Cr. 441 (LJL), 2020 WL 1862294, at \*8 (S.D.N.Y. Apr. 14, 2020). Mr. Arce, who is 44 years old and suffers from no medical condition that increases his risk of severe illness from COVID-19, does not assert that he is severely ill from COVID-19, or that FCI Jesup cannot provide him treatment sufficient to meet his medical needs while he battles the disease.

Mr. Arce's renewed motion for compassionate release is accordingly denied, and the Clerk of Court is respectfully directed to terminate the motions pending at ECF Nos. 215 and 224.

**SO ORDERED.**

Dated: New York, New York  
July 22, 2020

  
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NAOMI REICE BUCHWALD  
UNITED STATES DISTRICT JUDGE